

## **Remarks**

### **Nonstatutory Double Patenting Rejections**

(a) Claims 1-35 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of co-pending Application No. 10/765,255 (the '255 application), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is improper under 35 USC 121. The '255 application (Atty. Docket No. 6080-P39**DIV5**) and the instant application (Atty. Docket No. 6080-P39**DIV4**) are each divisional applications of common parent Application No. 09/565,138 (Atty. Docket No. 6080-P39), now U.S. Patent No. 6,723,428, and were filed as a result of a restriction requirement received in the parent application. MPEP §804, par. II states that "a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application under 35 U.S.C. 121."

Applicant, thus, respectfully requests reconsideration and withdrawal of this ground for rejection.

(b) Claims 1-35 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 10, 13, 23, 30-34, 50-54, 56, 65-66, 70 and 72-74 of co-pending Application No. 10/762,920 (the '920 application), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '920 application (Atty. Docket No. 6080-P39**B**) and the instant application are each divisional applications of common parent Application No. 09/565,138, now U.S. Patent No. 6,723,428, and were filed as a result of a restriction requirement received in the parent application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

(c) Claims 1-35 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 85-87 and 93 of co-

pending Application No. 10/655,330 (the '330 application), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '330 application (Atty. Docket No. 6080-P43) is also a divisional application of common parent Application No. 09/565,138, now U.S. Patent No. 6,723,428. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

(d) Claims 1-35 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 7, 11-13 and 17 of co-pending Application No. 10/768,840 (the '840 application<sup>2</sup>), assigned to the assignee of the present application.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '840 application (Atty. Docket No. 6080-P39DIV6) is also a divisional application of common parent Application No. 09/565,138, and was filed as a result of a restriction requirement received in the parent application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

(e) Claims 12-22 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of co-pending Application No. 10/770,306 (the '306 application), assigned to the assignee of the present application, in view of Rock (US 6,194,332).

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '306 application (Atty. Docket No. 6080-P39DIV2, now U.S. Patent 6,841,244) is also a divisional application of common parent Application No. 09/565,138, and was filed as a result of a restriction requirement received in the parent application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

(f) Claims 23-35 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 27-28 and 31 of co-

---

<sup>2</sup> Please note that the claims of this application have been allowed as of March 15, 2005

pending Application No. 10/406,720 (the '720 application), assigned to the assignee of the present application, in view of Rock.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '720 application (Atty. Docket No. 6080-P39DIV1) is also a divisional application of common parent Application No. 09/565,138, and was filed as a result of a restriction requirement received in the parent application. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

(g) Claims 1-11 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 9 of U.S. Patent No. 6,723,428 (the '428 patent, assigned to the assignee of the present application, in view of Rock.

Applicant respectfully submits that the double patenting rejection is similarly improper under 35 USC 121. The '428 patent (Atty. Docket No. 6080-P39) is the common parent of the co-pending applications used as 'references' in the Action, and in which the restriction requirement was received leading to all the divisional applications. Thus, Applicant similarly requests reconsideration and withdrawal of this ground for rejection.

#### Claim rejections under 35 USC § 103

Claims 1-11 were rejected under 35 USC § 103(a) as being unpatentable over Hartzog et al. (US 6,037,057) in view of Rock. The Action states that Hartzog et al. teach that the sheath takes up about 20% to about 50% of the fiber. However, this is not correct since this range includes matter which Hartzog clearly states is outside of his desired range.

For example, see column 3, in the Summary of the Invention where it is stated that the sheath comprises less than thirty percent of the total cross-sectional area of the fiber. This is repeated at the end of column 3 in the beginning of the detailed description. At the top of column 4 Hartzog states that it is desirable to have the sheath comprise as little of the cross-sectional area as possible.

Contrary to the assertion in the Action, Table 3 does not teach to make fiber sheaths of over 30% of the total fiber cross-section. This table is only showing the results of the experiments which Herzog carried out to show that they obtained acceptable (to them) results only when the sheath was less than 30% of the fiber cross section. See FIG. 2 in which all of the

examples from Table 3 are shown, and only Example 1, and possibly Example 2, are considered acceptable to them. Examples 1 and 2 have 20% and 30%, respectively, of the sheath area compared to the total fiber cross section.

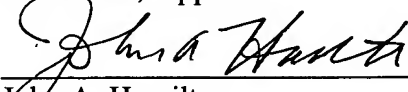
FIG. 6 does not provide any information, by itself, about the sheath thickness. At the top of column 13 Hartzog indicates that the range of sheath cross section was from 20% to 50%. Fig 6 only shows the distance in microns that the antimicrobial was located from the surface of the sheath but does not show the thickness of the sheath. Furthermore, claim 1 has been amended to include the limitation "zeolitic." Hartzog actually teaches away from the use of zeolites in its Background of the Invention, column 2, lines 17-59. Therefore, the rejection of claim 1, and because of the dependency therefrom, claims 2-11 is inappropriate and should be withdrawn.

In light of the foregoing, Applicant respectfully submits that claims 1-35 are in a condition for allowance, and respectfully request that the Examiner reconsider and withdraw all outstanding rejections and objections. Favorable consideration and allowance are earnestly solicited. Should there be any questions after reviewing this paper, please call Applicant's attorney at 617-854-4000.

Dated: March 30, 2005

Respectfully submitted,  
Stephen W. FOSS, Applicant

By:

  
\_\_\_\_\_  
John A. Hamilton  
Reg. No. 48,946  
Attorney for Applicant